

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 602 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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DILIP SUDARSAN

Versus

STATE OF GUJARAT  
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Appearance:

MR JV DESAI for Petitioner

Ms.Hansa Punani, ADDL. PUBLIC PROSECUTOR for

Respondent No. 1  
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CORAM : MR.JUSTICE M.H.KADRI and

MR.JUSTICE R.R.TRIPATHI

Date of decision: 02/12/1999

ORAL JUDGEMENT : (Per M.H. Kadri, J.)

The appellant, original accused by filing this appeal under sec.374 of the Code of Criminal Procedure, 1973 ("the Code" for brevity) has challenged the judgement and order dated July 23, 1996 of the learned Sessions Judge, Sabarkantha at Himatnagar rendered in NDPS Case No.2 of 1996, by which the appellant was

convicted under sec.20(B)(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the Act" for brevity) and sentenced the appellant to 10 years rigorous imprisonment and fine of Rs.1 lakh; in default to pay fine to undergo further 1 year rigorous imprisonment.

2. The prosecution case be summarised as under :

Police Sub Inspector, Shri Parbatsinh Mangalsinh Parmar was at the relevant time serving as PSI, Task Force, Himatnagar. On 27.11.1995 when he was present at the Police Station, at 1930 hours, an information was received that one person who was wearing saffron coloured clothes and whose appearance looks like a Sadhu and who was having beard, was carrying narcotic substance in one cloth bag. Said information revealed that the person of the above description was coming to Himatnagar Bus Stand for selling narcotic substance. Said information was noted down by PSI, Shri Parmar and two Panchas. The information received by PSI, Shri Parmar was conveyed to the District Superintendent of Police. Two Panchas were called and preliminary Panchnama was drawn at the Police Station at 2015 hours. PSI, Shri Parmar accompanied by two Panchas and members of the Task Force went to Himatnagar Bus Stand. Thereafter, PSI, Shri Parmar, the Panchas and the members of the Task Force in search of the person who was carrying narcotic substance had gone to one house, which was in a dilapidated condition. In front of the house, one person was found holding torch light. The description of the said person tallied with the description of the person as described in the information received by PSI, Shri Parmar. The member of the Task Force cordoned off the area where the person was standing and it was found that the said person was having beard and wearing saffron clothes. It was found that the said person was carrying a clothe bag. It was found that in the said clothe bag, narcotic substance in the form of charas weighing about 2 KGs. was hidden.

PSI, Shri Parmar informed the said person that if he wanted to be searched in presence of a gazetted officer or the nearest Magistrate, he should inform the raiding party. The person, who was apprehended by PSI, Shri Parmar informed the raiding party that he wanted to be searched in presence of a gazetted officer. PSI, Shri Parmar thereafter, sent a Yadi to the Deputy Supdt. Shri D.A. Rathod requesting him to remain present at the search of the person who was carrying narcotic substance. On receipt of the Yadi from PSI, Shri Parmar, the Deputy Superintendent, Shri Rathod arrived at the place of the incident. In presence of Deputy Superintendent, Shri

Rathod, the search was carried out of the person. During the search it was found that Charas weighing 2 KG, 184 grams was kept in the bag for which the person did not possess any pass or licence. In the presence of the Panchas said contraband substance was seized under a Panchnama and seal bearing impression of the PSI, TASK, Himatnagar was affixed. Deputy Superintendent, Shri Rathod also signed the Panchnama.

PSI, Shri Parmar arrested the person, now to be referred to as the appellant. After arresting the appellant, PSI Parmar lodged the complaint. The complaint, Panchnama and the appellant were handed over to CPI, Shri J.D. Katara, who was In-charge of the Police Station and offence was registered against the appellant at C.R. No.II- 355/95. The investigation of the above crime was carried on by PI, Shri Katara of Himatnagar Town Police Station. CPI, Shri Katara recorded the statement of witnesses, Sankabhai Khengarbhai Desai, Vikramsinh Jujarsinh and Balaji Punjaji. Thereafter, the investigation was handed over to Police Inspector, Shri J.M. Chavda. On 29.11.1995, the seized muddamal Charas was sent to Forensic Science Laboratory ("FSL" for brevity) for analysis. On receipt of the report from FSL, charge sheet came to be filed on 14.2.1996 against the appellant for offences punishable under sec.20(b)(ii) of the Act in Sessions Court, Sabarkantha at Himatnagar, which came to be numbered as NDPS Case No.2/96.

3. Charge, Exh.8 was framed against the appellant, which was read over and explained to him. The appellant pleaded not guilty and claimed to be tried. In order to prove the case against the appellant, the prosecution examined (i) PW1 Amritbhai Bhagwanbhai Desai, Exh.15; (ii) PW2 Jagdishchandra Harishchandra Choksi, Exh. 19; (iii) PW3 Vikramsinh Junjarsinh Bhati, Exh.20; (iv) PW4 Sankabhai Khengarbhai, Exh.21; (v) PW5 Parbatsinh Mangalsinh Parmar, Exh.22; (vi) PW 6 CPI, Jagdishbhai Devalbhai Katara, Exh.6; PW7 PI, Joravarsinh Manusinh Chavda, Exh.29; and (vii) PW8, Deputy Supdt. of Police, Danji Amrabhai Rathod, Exh.32.

4. The prosecution produced documentary evidence, such as, FIR lodged by PSI, Parmar, Panchnama of search and seizure of the appellant, informations sent to the Dy.SP, Sabarkantha at Himatnagar, forwarding letter to FSL, report of FSL, Yadi sent to Dy.SP with regard to search of the appellant, etc. to prove its case against the appellant.

5. After the evidence of the prosecution was over,

the appellant was questioned generally and his statement came to be recorded under sec.313 of the Code. In further statement the appellant stated that he has not committed any offence and no narcotic substance was found from his custody and false case was cooked up against him. The learned Sessions Judge on overall appreciation of the evidence produced by the prosecution concluded that all the mandatory provisions of the Act were followed in carrying out the search and seizure of the appellant. It was concluded that the appellant was having conscious possession of the contraband charas weighting 2 KGs and 184 gms. for which he was not having any pass or permit; that the evidence of the prosecution witnesses was trustworthy and reliable and the prosecution has proved beyond doubt that the appellant was carrying narcotic substance. On the basis of the above referred to conclusion, the learned Sessions Judge convicted the appellant for the offences as mentioned above and sentenced him of rigorous imprisonment for 10 years and fine of Rs.1 lakh, in default further rigorous imprisonment of one year, which has given rise to filing of this appeal by the appellant.

6. Learned counsel for the appellant, Shri J.V. Desai has taken us through the entire evidence, oral as well as documentary evidence produced on record of this case and has submitted that the appellant was falsely involved in the present case. It was further submitted that the mandatory provisions of the Act, i.e. provisions of sec.50 of the Act were not followed while carrying out search and seizure of the appellant. Learned counsel for the appellant submitted that evidence of the prosecution witnesses was not trustworthy and reliable because the witnesses examined by the prosecution were members of the raiding party, who were interested in the success of the case against the appellant. Learned counsel for the appellant submitted that no independent persons were selected as Panchas and therefore, the conviction recorded by the learned Sessions Judge, should be quashed and set aside and the appeal be allowed.

7. We have also heard the learned Additional Public Prosecutor, Ms.Hansa Punani, who has supported the findings recorded by the learned Sessions Judge. Learned Additional Public Prosecutor has submitted that the prosecution has proved the charges levelled against the appellant beyond reasonable doubt and the appeal be dismissed and the conviction and sentence imposed on the appellant be confirmed.

8. The submissions of the learned counsel for the appellant that the mandatory provisions of sec.50 of the Act were not followed deserves to be rejected. The evidence of PSI, Shri Parmar, Exh.22 clearly establishes that before carrying out search and seizure of the appellant, the appellant was informed of his valuable right of being searched in presence of a gazetted officer or the nearest Magistrate. The appellant had availed of this right by informing the raiding party that he wanted to be searched in presence of a gazetted officer. Thereafter, Yadi was sent to Dy.SP, Shri Rathod requesting him to remain present during search and seizure of the appellant. After arrival of the Dy.SP, Shri Rathod, the appellant was informed that he may search the members of the raiding party and on search of the members of the raiding party, no incriminating article was found. Thereafter, in presence of Dy.SP, Shri Rathod, the appellant was searched and in one clothe bag which the appellant was carrying contraband article of black substance was found, which smelt like charas. When the said contraband article was weighed it was found to be weighing 2 KGs and 184 gms. Said contraband article was packed and sealed in presence of Dy.SP, Shri Rathod and the Panchas and was seized under a Panchnama which was signed by two Panchas and Dy.SP, Shri Rathod. A slip bearing signature of the Panchas, Dy.SP Rathod was also affixed on the said article and the seal bearing impressions of PSI, Himatnagar was affixed. Thereafter, said article was handed over to PI, Himatnagar Police Station.

9. The report of the FSL, Exh. 31 indicates that the muddamal article which was seized on November 27, 1995 in connection with C.R. No.II-- 355/95 of Himatnagar Town Police Station was received in sealed condition and the seal affixed on the said article tallied with the seal which was affixed on the forwarding letter, Exh.30. It may also be mentioned that when the said article was opened, a slip bearing the signatures of two Panchas, namely, Amritbhai Bhagwanbhai Desai and M.R. Khokhria was found. Said slip also contained the signature of Dy.SP, Himatnagar. This indicates that the muddamal which was seized from the possession of the appellant was sent to FSL in sealed condition and without any further delay. On analysis of the said article it was found that it was a contraband substance, charas as defined under the Act.

10. Panchnama, Exh. 17 and the oral evidence of the Panch, Amritbhai Bhagwanbhai Desai, Exh.15 also establishes that before carrying out search of the

appellant provisions of sec.50 of the Act were strictly complied with. The finding of the learned Sessions Judge that there was total compliance of sec.50 of the Act is eminently just and proper and it does not call for any interference.

11. It was incidentally submitted by the learned counsel for the appellant that the raiding party had summoned gazetted officer, who was Dy.SP, i.e. a police officer. It is submitted that when the appellant asked the raiding party that a gazetted officer may be called, PSI, Shri Parmar ought not to have called Police Officer, instead of that he could have called a gazetted officer, who was not a police officer. In our opinion, this submission of the learned counsel for the appellant deserves to be rejected in view of the pronouncement of the Supreme Court in *State of Punjab v. Balbir Singh*, AIR 1994 SC 1872. It is ruled in the above referred to decision that if search is carried out in presence of a gazetted officer, who is police officer search cannot be said to be illegal so as to cause prejudice to the accused.

12. As discussed above, the mandatory provisions of the Act were strictly complied with in the search and seizure of the appellant. The article which was seized from the appellant was found to be narcotic substance, i.e. charas, which is a contraband substance under the Act.

13. The submission of the learned counsel for the appellant that no independent persons were selected as Panchas at the time of drawing of the Panchnama of seizure and search of the appellant is devoid of any merit and deserves to be rejected. The learned counsel for the appellant has taken us through the entire evidence of the Panch, Amritbhai Bhagwanbhai Desai, PW1, Exh. 15. Said witness was serving as a Peon in the office of the Gujarat Electricity Board at Himatnagar. He deposed that when he was called by Police Sub Inspector, Shri Parmar to remain as Panch, he had shown his willingness. He also deposed that another Panch was also present at the time of drawing of the Panchnama. The evidence of PW1, Amritbhai Bhagwanbhai Desai indicates that during the search and seizure of the appellant, he and the other Panch had remained present. It also indicates that when the narcotic substance was seized and the Panchnama was drawn, both the Panchas had signed in the Panchnama. This shows that all throughout the procedure of search and seizure, the Panchas had remained present. The Panch has also identified his

signature on the Panchnama and on the slip bearing signatures of the Panchas and the gazetted officer, Deputy Superintendent of Police, Shri Rathod, which was affixed at the time of sealing the muddamal narcotic substance. We do not find any infirmity in the evidence of the Panch witness, Amritbhai Bhagwanbhai Desai. The witness has deposed in a most natural way and we do not find that he was a man of Police and therefore, he was selected as a Panch.

14. It is incidentally submitted by the learned counsel for the appellant that no reliance can be placed on the evidence of the members of the raiding party, who were Police personnel also deserves to be rejected. When the members of the Police force had remained present at the time of carrying out raid and search of the appellant, it cannot be said that they were interested persons. We have also gone through the evidence of the members of the raiding party, who were present at the time of the search of the appellant and we do not find any infirmity in their evidence. On the contrary, their evidence is most trustworthy and reliable. Therefore, the submission of the learned counsel for the appellant that the witnesses examined by the prosecution were merely members of the raiding party, who were interested in the success of the case against the appellant also deserves to be rejected. These were the only submissions advanced by the learned counsel for the appellant and we do not find any substance in the above submissions.

15. In view of the foregoing discussion we do not find any merit in this appeal. It is hereby dismissed. Muddamal be destroyed in terms of the directions given by the learned Sessions Judge in the impugned judgement.

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